

ASEAN Community Building – What It Really Means to be a Community

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This year, the Association of Southeast Asian Nations (ASEAN) is celebrating its 50th founding anniversary. It is also an auspicious time to reflect on its community-building efforts, especially as it approaches the 10th anniversary of the adoption of the ASEAN Charter next year, which is an important milestone in ASEAN's history. The ratification of the Charter clearly set in motion the launching of the blueprints of the three ASEAN Community pillars and the creation of the three mechanisms – namely, the ASEAN Intergovernmental Commission on Human Rights (AICHR), the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), and the ASEAN Institute for Peace and Reconciliation (AIPR). These mechanisms were mandated, respectively, to promote human rights protection, the protection of women and children, and peace and conflict prevention in the region. It is therefore relevant to ask whether ASEAN has made some progress in achieving some of its stated human protection goals as part of its efforts in building a community of caring societies. This essay examines the vision of an ASEAN Community by focusing on the relevant principles on human protection that have been adopted by ASEAN since 2008; whether these principles have become shared values rather than just aspirations; and identifies some of the challenges and opportunities for realising and implementing these people-centred norms. Accordingly, it is argued here that although ASEAN has consciously adopted a more people-oriented and people-centred approach to building a regional community, some challenges remain in promoting and implementing human protection principles that were incorporated in its Charter and other key documents. This includes diversity in political, economic, and social systems in the region, and continued adherence to traditional norms and consensus decision-making. At the same time, there are enabling factors that could help build an ASEAN community that is anchored on human security, such as the increasing awareness among state and non-state actors in the region about the importance of relaxing the non-interference principle and the growing network of civil society and other stakeholders who strongly advocate for greater participatory regionalism in promoting good governance, rule of law, and human rights

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protection. As well, the increasing willingness of ASEAN's dialogue partners to assist in capacity building of member states augurs well for ASEAN community building in the long term. Overall, a meaningful ASEAN Community is only possible if member states are strongly committed to putting human security, human development, and human protection at the core of their national and regional development agenda, and take seriously their primary responsibility to contribute to the realisation of a community of caring societies.

ASEAN HUMAN PROTECTION PRINCIPLES: AN OVERVIEW

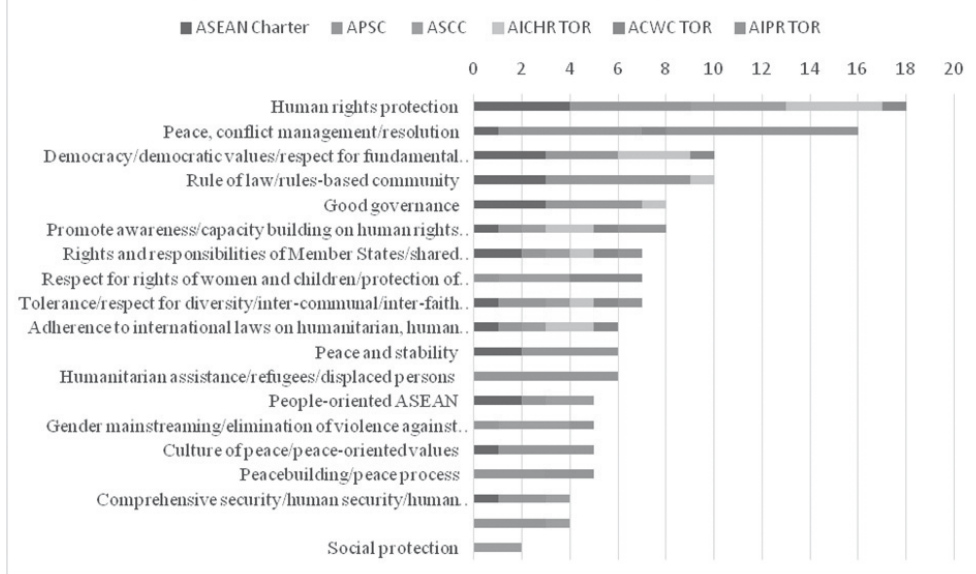
While the ASEAN Charter reaffirmed the group's traditional state-oriented norms such as respect for sovereignty and non-interference, it also recognised people-oriented principles such as human rights protection, rule of law, respect for and tolerance of diversity, and peace and conflict prevention, among others. The ASEAN Political and Security Community (APSC) and ASEAN Social and Cultural Community (ASCC) blueprints also contain these principles, and the terms of reference for the three ASEAN mechanisms (AICHR, ACWC, and AIPR) have incorporated them accordingly. Table 1 below summarises the number of times these principles were mentioned across all these documents, which are also presented in chart form in the figure that follows.

Table 1: ASEAN Human Protection Principles in Key Documents¹

Key Terms	ASEAN Charter	APSC	ASCC	AICHR TOR	ACWC TOR	AIPR TOR	Total mentions
Human rights protection	4	5	4	4	1		18
Peace, conflict management/resolution	1	6			1	8	16
Democracy/democratic values/respect for fundamental freedoms	3	3		3	1		10
Rule of law/rules-based community	3	6		1			10
Good governance	3	4		1			8
Promote awareness/capacity building on human rights protection/peace, reconciliation and conflict prevention	1	1	1	2	1	2	8
Rights and responsibilities of Member States/ shared responsibilities	2	1	1	1	1	1	7
Respect for rights of women and children/ protection of women and children		1	3		3		7
Tolerance/respect for diversity/inter-communal/inter-faith dialogue	1	2	1	1	1	1	7
Adherence to international laws on humanitarian, human rights, women and children protection	1	1	1	2	1		6
Peace and stability	2	4					6
Humanitarian assistance/refugees/displaced persons		6					6
People-oriented ASEAN	2	1	2				5
Gender mainstreaming/elimination of violence against women		1	3			1	5
Culture of peace/peace-oriented values	1	4					5
Peacebuilding/peace process		3				2	5
Comprehensive security/human security/ human development	1	2	1				4
Protection of migrant workers/against human trafficking/people smuggling		3	1				4
Social protection			2				2

¹ This table and the accompanying figure is adopted from Noel M. Morada, “Southeast Asian Regionalism, Norm Promotion and Capacity Building for Human Protection: An Overview,” *Global Responsibility to Protect*, Vol. 8 (2016), pp. 111-132.

Figure 1: ASEAN Human Protection Principles and Issues



It is clear from the table and figure above that: 1) human rights protection is a key component of ASEAN's community-building vision; 2) both the rights and *responsibilities* of member states were acknowledged; and 3) the values of tolerance and respect for diversity were also recognised. Based on the total number of mentions across these documents, human rights protection scored the highest (18), followed by peace, conflict management and conflict resolution (16), and rule of law, democracy, and democratic values (each with 10 mentions).² Accordingly, in the ASEAN Charter and the blueprints of the APSC and ASCC, the primary responsibility of member states in implementing the above mentioned people-oriented principles were underscored even as they also upheld the principle of state sovereignty. Thus, one can argue that the concept of state responsibility in relation to human protection, respect for diversity, and adherence to international norms are not alien to ASEAN³ and has been part of the community-building efforts of the organization and in promoting ASEAN regionalism. Meanwhile, the three mechanisms – AICHR, ACWC, and AIPR – were tasked to give priority to promoting awareness and building capacity for human rights protection, protection of women and children, and peace and reconciliation in their respective terms of reference.⁴

² See Noel M. Morada, *ibid.*, p. 122.

³ *Ibid.*

⁴ *Ibid.*

While the incorporation of these human protection principles in the Charter and other documents represent an important milestone in ASEAN's community-building agenda, some challenges remain as far as implementing them is concerned. This is so because the intergovernmental framework and decision-making processes in ASEAN have not been overhauled particularly in dealing with various human security and human protection issues in the region. Certainly, the "ASEAN Way" of doing things, which is anchored on consultation and consensus among all member states, remains intact and continues to be a major hurdle that must be overcome to ensure that the organisation can respond effectively to these concerns and in a timely manner. Implicit in the "ASEAN Way" is not only about agreements being arrived at based on the "lowest common denominator" but, more importantly, that each member of the group has the veto power to oppose, postpone, or derail decisions and actions on urgent or critical problems that affect the rest of its members. Accordingly, given the wide diversity of political systems among member states, the slow and incremental approach to decision-making continues to be the norm. Political diversity within the group also means that it is also quite difficult to automatically translate or implement ASEAN agreements reached by consensus into the members' respective domestic sphere. Political sensitivities in each state could certainly constrain the process of implementing ASEAN human protection principles at home, such as adherence to human rights protection. In fact, human rights protection is still viewed by most member states as primarily a domestic issue that should be addressed within their exclusive sovereign domain. While the ASEAN Charter and other documents underscore the primary responsibility of member states to implement these norms, there are no provisions in these agreements that enable the organisation to sanction erring members who fail to carry out their obligations. Indeed, given the intergovernmental nature of ASEAN, member states can only encourage their peers to abide by the principles of the Charter and comply with agreements signed by all of them.

It is significant to point out that while the Charter and other relevant ASEAN documents recognise the importance of promoting human rights protection as a key component of ASEAN community building, there remains an ideological divide among member states on the universality of this norm.⁵ This is reflected in the wording used in the ASEAN Human Rights Declaration (AHRD) that was adopted in 2012, which was criticized by many civil society groups in the region for upholding a relativist view of human rights. However, to stem this criticism, ASEAN leaders during their 2012 summit in Phnom Penh issued a statement upholding the Universal Declaration of Human Rights. Table 2 below summarises the relevant sections of the AHRD where universal and relative principles in the document are put side-by-side.

⁵ See Noel M. Morada, *ibid.*, p. 126.

Table 2: The ASEAN Human Rights Declaration: Universal vs. Relative Principles⁶

Universal	Relative
‘1. All persons are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity.’ ‘2. Every person is entitled to the rights and freedoms set forth herein without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability, or other status.’	‘6. The enjoyment of human rights and fundamental freedoms must be balanced with the performance of corresponding duties as every person has responsibilities to all other individuals, the community and the society where one lives. It is ultimately the primary responsibility of all ASEAN Member States to promote and protect all human rights and fundamental freedoms.’
‘7. All human rights are universal, indivisible, interdependent, and interrelated....’	‘7... At the same time, the realization of human rights must be considered in the regional and national context bearing in mind different political, economic, legal, social, cultural, historical, and religious backgrounds.’
‘8. The human rights and fundamental freedoms of every person shall be exercised with due regard to the human rights and fundamental freedoms of others....’	‘8... The exercise of rights and fundamental freedoms shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition for human rights and fundamental freedoms of others, and to meet the just requirements of national security, public order, public health, public safety, public morality, as well as the general welfare of the peoples in a democratic society.’
‘11. Every person has an inherent right to life which shall be protected by law...’	‘11... No person shall be deprived of life save in accordance with law.’
‘16. Every person has the right to seek and receive asylum in another State...’	‘16.... in accordance with laws of such State and applicable international agreements.’
‘18. Every person has the right to a nationality...’	‘18... as prescribed by law.’
‘26. ASEAN Member States affirm all the economic, social and cultural rights in the Universal Declaration of Human Rights.’	‘34. ASEAN Member States may determine the extent to which they should guarantee the economic and social rights found in this Declaration to non-nationals, with due regard to human rights and organization and resources of their respective national economies.’

Source: ASEAN Human Rights Declaration 2012. Numbers correspond to the numbered paragraphs in the AHRD.

From the table above, it is evident that the AHRD contains qualifications in pertinent paragraphs that include reference to universal principles on human rights protection. These limiting clauses underscore the primacy of national laws and domestic contexts of member states in interpreting international norms and how they are to be implemented. Apparently, the declaration neither aims to have member states uniformly adhere to international human rights standards nor develop its own regional norms, at least for now. Instead, the diversity of political contexts is acknowledged and domestic

⁶ This table is adopted from Noel M. Morada, *ibid.*, p. 125.

legal norms are privileged. This also partly explains why thus far only five of the ten member states of ASEAN have national human rights institutions, notwithstanding the creation of the AICHR in 2009. The AICHR itself cannot impose on other member states to set up their national human rights institutions even as it is limited by its existing terms of reference to promoting awareness about human rights protection. As well, it is not mandated to monitor or hear complaints of human rights violations committed in member states, nor can they impose sanctions against them. It is important to note that even for ASEAN members that already have national human rights institutions, there is significant variation in their adherence to the Paris Principle on autonomy or independence. Currently, only five members of ASEAN – Indonesia, Malaysia, the Philippines, Thailand, and Vietnam (which does not have a national human rights commission) – have been alternately elected in the UN Human Rights Council since its creation in 2006 and have participated in its Universal Periodic Review (UPR). Although Myanmar has also participated in the UPR process, it has not accepted all the recommendations for improving human rights protection in the country.⁷

CHALLENGES AND OPPORTUNITIES FOR HUMAN PROTECTION IN THE ASEAN COMMUNITY

Overall, the gap between the principles adopted by ASEAN on human rights and their implementation by member states raises the question of whether norms on human rights and human protection in general remain aspirations for now rather than strictly shared values to which ASEAN members are deeply committed. Accordingly, this means that ASEAN is still in the process of incrementally developing its regional identity given that the transformation of its normative aspirations on human protection into shared values is very much constrained by the diversity of its members' domestic contexts. The implications of this for ASEAN community building are significant in many ways, to wit: 1) safeguarding national sovereignty by member states remains a major challenge to building a common regional identity and its ability to collectively respond to human protection issues; 2) continuing adherence to the "ASEAN Way" of decision-making means that progress in achieving the goals of the three pillars of the ASEAN Community will be uneven, with norms such as those in the APSC and ASCC pillars specifically related to human protection facing more difficulties in implementation; and 3) without creating new regional institutions that are designed to promote adherence, commitment, and compliance of member states to human protection principles and agreements, ASEAN's community building will remain essentially an executive-led intergovernmental policy coordination process that will have very limited impact in enhancing human security at the domestic and regional levels.

⁷ Ibid.

Notwithstanding the foregoing challenges, there are also enabling factors that could help ASEAN in pushing the envelope so to speak as far as community building for human protection is concerned. This includes: 1) increasing calls from various critical stakeholders for ASEAN to consider relaxing the non-interference principle especially in dealing with humanitarian crisis situations that affect the region; 2) the growing network of civil society groups and other non-state actors in ASEAN that continues to exert pressure on existing ASEAN mechanisms for greater participatory regionalism to address human rights protection issues and human security concerns of vulnerable groups in member states; and 3) increasing willingness of its dialogue partners to help ASEAN and its member states to contribute to capacity building in dealing with human rights issues, protection of women and children, and peace and conflict prevention. On the non-interference principle, for example, some former ASEAN officials and parliamentarians from member states concerned about the continuing risk of atrocities in Myanmar against the stateless Rohingyas in Rakhine and other ethnic groups in the country have openly called for a review of this traditional norm to enable the group to respond more effectively to human protection concerns in the country.⁸ Indeed, the humanitarian crisis spawned by these communal and ethnic armed conflicts has spilled over into other ASEAN member states – mainly Thailand, Malaysia, and Indonesia – who have been forced to take care of migrants, refugees, and other displaced peoples fleeing the internal turmoil in Myanmar. The renewed outbreak of communal violence in Rakhine following the militant attacks in October 2016 against border policemen and the subsequent outflow of Rohingya refugees fleeing the military's clearing operations forced ASEAN members to call for a special meeting of foreign ministers in Yangon in December 2016. The informal meeting served as an opportunity for some members to express very strongly their concern about the plight of Muslim Rohingyas and to exert pressure on the Myanmar government to protect them from alleged atrocities being committed by security forces in Rakhine. While it was not the first time that ASEAN members have collectively expressed their concerns about Myanmar's internal problems – including the protection of the stateless Rohingyas following a series of communal violence since July 2012 – it was by far the most overt demonstration of the group's resolve to put aside the non-interference principle in response to a serious

⁸ See for example Humaniti, "Former ASEAN Leaders Issue Letter on Myanmar Intolerance," 22 April 2015, from <http://www.burmapartnership.org/2015/04/former-asean-leaders-issue-letter-on-myanmar-intolerance/>, accessed on 15 December 2015. Parliamentarians in the region also called for ASEAN to relax the non-interference principle and to ask the Myanmar government to address the root causes of the plight of the Rohingyas and the communal conflict in the country between Buddhists and Muslim communities. See Laignee Baron, "Regional MPs warn of Rohingya 'crisis' ahead of ASEAN meeting", *Myanmar Times*, 23 April 2015, from <http://www.mmmtimes.com/index.php/national-news/14085-regional-mps-warn-of-rohingya-crisis-ahead-of-asean-meeting.html>, accessed 15 December 2015.

human protection issue affecting the region.⁹ It is very clear from this example that it is no longer acceptable for many ASEAN members to continue adhering to the traditional norm of non-interference especially if it involves the protection of vulnerable populations and in the context of internal conflicts spilling over into neighbouring states.

As for civil society groups and other non-state actors, they continue to play a critical role in exerting pressure on ASEAN to be more responsive to human protection issues by providing policy inputs through dialogues with ASEAN officials and representatives in AICHR and ACWC. The AICHR for example has established a consultative mechanism with some 16 civil society groups¹⁰ within and outside the region, and has conducted thematic studies and seminars on human rights.¹¹ For its part, the ACWC has also conducted dialogues with civil society groups in the region;¹² workshops and seminars dealing with topics such as elimination of trafficking of persons, impact of climate change on women and children, the Convention on the Elimination of Discrimination Against Women (CEDAW); and reviews of laws, policies and practices in ASEAN relating to protection of women and children.¹³ The extent to which the network of civil society groups in the region is able to substantively influence member states of ASEAN to allow for greater participatory regionalism in promoting human protection of course remains to be seen, especially in implementing certain policies that enhance human rights protection, protection of women and children, as well as conflict prevention in the home front. Meanwhile, there is no question that for many member states, capacity-building assistance from dialogue partners of ASEAN in promoting human protection across the three pillars remains a critical factor for realising the goals

⁹ Since Myanmar's admission into ASEAN in 1997, member states have expressed concerns about internal problems in the country. This includes the continuing persecution of detained National League for Democracy leader Aung San Suu Kyi between 2003-2010 until she was released after the first elections were held; in 2007 following a violent crackdown by the military against Buddhist monks; in 2008 following the humanitarian crisis in the aftermath of Cyclone Nargis; and in 2012 and 2014 following the outbreaks of communal violence in Rakhine and other cities between Muslim and Buddhist communities.

¹⁰ For a list of civil society groups, see "Consultative Relationship with AICHR," AICHR.org, from <http://aichr.org/external-relations/consultative-relationship-with-the-aichr/>, accessed on 28 April 2017.

¹¹ Among the topics that have been covered by AICHR's thematic studies and seminars are: human rights and corporate responsibility, rights of persons with disabilities, international human rights law, and mainstreaming human rights across the three pillars. See "AICHR Activities," AICHR.org, from <http://aichr.org/category/activities/aichr/>, accessed on 28 April 2017.

¹² See "The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) Joins Hands with Civil Society for the Elimination of Violence against Women and Violence against Children," 18 January 2012, from <http://acwc.asean.org/resources/activities-recommendations/asean-commission-promotion-protection-rights-women-children-acwc-joins-hands-civil-society-elimination-violence-women-violence-childr/>, accessed on 28 April 2017.

¹³ For a list of these seminars and activities, see "Activities and Recommendations," ACWC.ASEAN.org, from <http://acwc.asean.org/resources/activities-recommendations/>, accessed on 28 April 2017.

of the ASEAN community. It is therefore quite important for ASEAN to take advantage of the willingness of donor countries to continue supporting activities and projects that promote human protection through dialogue and engagement among critical stakeholders in the region, including those from academe/think tanks, civil society, and the media. Specifically, Japan, Australia, the European Union, and the United States should continue assisting ASEAN member states in mainstreaming human rights protection, atrocities prevention, protection of women and children, etc., in their respective policies on good governance, rule of law, peace building, and conflict prevention at home.

ASEAN COMMUNITY IN A CHANGING GLOBAL LANDSCAPE

Fifty years after its creation, it is to ASEAN's credit that the region has remained stable and peaceful despite some unresolved territorial conflicts among its members. This is mainly due to the adherence of member states to fundamental principles embodied in the Treaty of Amity and Cooperation (TAC), which remains the cornerstone of ASEAN cooperation and regional diplomacy. The TAC has also been instrumental in building a concentric security framework and dialogue mechanisms – mainly through the ASEAN Regional Forum (ARF) and the East Asia Summit (EAS) – where ASEAN's centrality is key to managing the security environment in this part of the world. It is largely because of these ASEAN-centred mechanisms that China, Japan, and the divided Koreans (in the ARF) are engaged in the process of security dialogue since 1994, which also contributed to the creation of the Six-Party Talks that enabled concerned states until the late 1990s to manage the problem of nuclear proliferation in the Korean peninsula. (The importance of engaging with North Korea through the ARF has become even more critical in recent months amidst increasing tensions in the Korean peninsula following ballistic missile tests conducted by Pyongyang in April 2017.) As well, the ASEAN Plus Three (APT) framework has enabled ASEAN members to engage with China, Japan, and South Korea across a range of political-security and economic issues of mutual concern, including those related to difficult problems such as the dispute over the South China Sea in the case of China. Indeed, without ASEAN's centrality in the ARF, EAS, and the APT, it would have been more difficult to manage both traditional and non-traditional security issues facing the region. These include threats from terrorism and violent extremism, human trafficking, drug trafficking, migration, pandemic diseases, and natural disasters related to climate change.

While ASEAN no doubt has contributed significantly in maintaining international peace through the above security and dialogue mechanisms, its members should also give importance to building an ASEAN Community that enables them to enhance their national resilience and to be responsive to a range of human security issues in the region. Specifically, human development problems such as poverty, inequality, and access to basic services are at the root of many internal conflicts faced by many ASEAN

states. To some extent, these problems are exacerbated by lack of accountability and transparency in government institutions, which contribute to graft and corruption, violations of human rights and the principle of rule of law, perpetration of political violence and atrocities, and limited access to justice. For some ASEAN members that are still in the process of nation-building, these issues are complicated by continuing armed challenges to the legitimacy of the state, which remain difficult to resolve in the absence of meaningful dialogue that would lead to negotiated peace agreements that are acceptable to all stakeholders. In some cases, the rise of nationalist or religious extremist ideas undermines social harmony that is anchored on the values of tolerance and respect for diversity in many multi-ethnic societies in the region. Some governments need to respond more effectively to contain this threat, which has led to increasing use of hate speech, violent attacks, or adoption of discriminatory laws against minority groups.

Indeed, national resilience is key to building an ASEAN Community where member states are committed to promoting and implementing human protection principles and in developing regional resilience based on shared values. This is in fact clearly stated in the ASEAN Community Vision 2025, which was adopted in the Summit of Leaders in 2015, where they reaffirmed the importance of these principles as they envisioned “a peaceful, stable, and *resilient Community* with enhanced capacity to respond effectively to challenges.”¹⁴ The ASEAN leaders also underscored the “complementarity of the United Nations 2030 Agenda for Sustainable Development with ASEAN community building efforts to *uplift the standards of living*” of peoples in the region.¹⁵ More importantly, they also stated their resolve to realise, among others:

A rules-based community that fully adheres to ASEAN fundamental principles, shared values and norms as well as principles of international law governing the peaceful conduct of relations among states;

An inclusive and responsive community that ensures our peoples enjoy *human rights* and fundamental freedoms as well as thrive in a *just, democratic, harmonious and gender-sensitive environment* in accordance with the principles of *democracy, good governance and the rule of law*;

A community that embraces *tolerance and moderation*, fully respects the different religions, cultures and languages of our peoples, upholds *common values in the spirit of unity in diversity* as well as addresses the threat of violent extremism in all its forms and manifestations;

¹⁴ “ASEAN Community Vision 2025,” from <http://www.asean.org/storage/images/2015/November/aec-page/ASEAN-Community-Vision-2025.pdf>, accessed on 29 April 2017. Italics by the author.

¹⁵ Ibid.

A community that adopts a *comprehensive approach to security* which enhances our capacity to address effectively and in a timely manner existing and emerging challenges, including non-traditional security issues, particularly transnational crimes and transboundary challenges...¹⁶

Overall, a people-centred and people-oriented ASEAN Community can be realised if member states are strongly committed to putting human security, human development, and human protection at the core of their national and regional development agenda. Traditional conceptions of sovereignty that privilege state security more than people's security are no longer viable in the context of a more interdependent and integrated world. Instead, states should take seriously their primary responsibility to protect their people, including vulnerable populations within their territory, from threats to human security that could lead to, or exacerbate further, internal conflicts. Sovereign responsibility should also be linked to the promotion of good governance, rule of law, and human protection, which contributes to enhancing the legitimacy of states and their national resilience in dealing with challenges facing the region.

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¹⁶ Ibid.